

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
1-800-624-3270
(406) 586-4364
watercourt@mt.gov

FILED
08/22/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0145-R-2020
Lambert, Kathryn
5.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Fourmile Valley Properties LLC

CASE 43B-0145-R-2020

43B 103681-00

43B 103682-00

NOTICE OF FILING OF SECOND MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

SECOND MASTER'S REPORT

Each Statement of Claim states that the ditch name is Upland Ditch. The ditch identified on the abstract for each of these claims in the Preliminary Decree is Upland Ditch. During preparation of the Preliminary Decree, the point of diversion legal description was changed to the legal description for Mill Creek Flat Ditch, not for Upland Ditch. In 2021, the Montana Department of Natural Resources and Conservation ["DNRC"] prepared a new marked aerial photograph for the Mill Creek claimants and the Court to use to determine the correct ditch

name and point of diversion legal description. On June 19, 2023 the Order Re-Opening Case And Setting Filing Deadline was issued to address this error with the claimant. A copy of the new marked aerial photograph was included. On August 10, 2023 the claimant filed its response stating that the ditch historically used for these water rights is the Upland Ditch. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

FINDING OF FACT

For both of these claims, the Preliminary Decree states that the point of diversion legal description is the NESWNE section 3, T6S, R9E, PARK. The legal description should be the NENENW section 3, T6S, R9E, PARK. The ditch name is already correctly appearing on these abstracts as Upland Ditch.

CONCLUSION OF LAW

The new DNRC marked aerial photograph and response filed by the claimant are sufficient to contradict and overcome the prima facie claims as incorrectly modified prior to issuance of the Preliminary Decree.

RECOMMENDATIONS

Based upon the above Finding of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Finding of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim for each claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via USPS Mail:

Fourmile Valley Properties LLC

~~11511 US Hwy 24~~

~~Divide, CO 80814-9260~~

(Return mail received)

180 Ellsworth St

Colorado Springs, CO 80906

Note: Service List Updated 8-11-23

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 103681-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: FOURMILE VALLEY PROPERTIES LLC
180 ELLSWORTH ST
COLORADO SPRINGS, CO 80906

Priority Date: MAY 1, 1904

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 22.44 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 0.88

Source Name: MILL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENW	3	6S	9E	PARK

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Subdivision: PARADISE VALLEY ESTATES

Ditch Name: UPLAND DITCH

Period of Use: APRIL 1 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.88		SE	14	5S	8E	PARK

Subdivision: PARADISE VALLEY ESTATES TRACT/LOT: 15

Total: 0.88

Remarks:

AUTHORIZATION TO CHANGE ISSUED 10-23-89 FOR CHANGE IN POINT OF DIVERSION, COMPLETED 11-18-91. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 43B-G(W)103676-00.

LEASE AUTHORIZATION TO CHANGE THE POINT, PLACE, AND PURPOSE OF USE ISSUED 01/27/1993 TO THE DEPARTMENT OF FISH, WILDLIFE & PARKS. SEE 43B 5862-00.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 103682-00 STATEMENT OF CLAIM

Version: 5 -- POST DECREE

Status: ACTIVE

Owners: FOURMILE VALLEY PROPERTIES LLC
180 ELLSWORTH ST
COLORADO SPRINGS, CO 80906

Priority Date: MAY 1, 1904

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 22.44 GPM

Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 0.88

Source Name: MILL CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENW	3	6S	9E	PARK

Period of Diversion: APRIL 1 TO OCTOBER 15

Diversion Means: HEADGATE

Subdivision: PARADISE VALLEY ESTATES

Ditch Name: UPLAND DITCH

Period of Use: APRIL 1 TO OCTOBER 15

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.88		SE	14	5S	8E	PARK

Subdivision: PARADISE VALLEY ESTATES TRACT/LOT: 14

Total: 0.88

Remarks:

AUTHORIZATION TO CHANGE ISSUED 10/23/1989 FOR CHANGE IN POINT OF DIVERSION COMPLETED 11/18/1991. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. SEE 43B 103676-00

LEASE AUTHORIZATION TO CHANGE THE POINT, PLACE, AND PURPOSE OF USE ISSUED 01/27/1993 TO THE DEPARTMENT OF FISH, WILDLIFE & PARKS. SEE 43B 5862-00.